A

SUNNY KHOO

v.

YB MENTERI SUMBER MANUSIA, MALAYSIA & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J
[JUDICIALY REVISION NO: R1-25-143-2008]
1 NOVEMBER 2010

C ***ADMINISTRATIVE LAW:*** *Judicial review - Statutory body - Decision of Minister not to refer representation on dismissal to Industrial Court for adjudication - Whether decision justified in view of reinstatement offer made - Industrial Relations Act 1967, s. 20 (3)*

D ***LABOUR LAW:*** *Employment - Dismissal, representation on - Decision of Minister not to refer representation to Industrial Court - Whether decision justified in view of reinstatement offer made - Industrial Relations Act 1967, s. 20 (3)*

E The applicant applied for judicial review under O. 53 Rules of the High Court 1980 for an order of *certiorari* to quash the decision made by the Minister (1st respondent) under s. 20(3) of the Industrial Relations Act 1967 (the 'Act') in refusing to refer the applicant's representation to the Industrial Court for adjudication. The facts showed that the applicant was employed by the 2nd
F respondent company as its Head of Finance and Credit Control and that he had made the representation to the Minister after he had considered himself constructively dismissed. Pursuant to the representation, the 2nd respondent had offered the applicant to reinstate him to his previous position with the same terms and
G conditions. The Minister found that there was no serious issue or fact for adjudication as the reinstatement offer was made in accordance with s. 20 of the Act. Hence, the judicial review application.

H **Held (dismissing the application with costs):**

(1) The letters sent by the 2nd respondent prior to and after the conciliation proceedings clearly showed that the offer of reinstatement was to the applicant's previous post. There was
I no issue by the applicant on the terms of the reinstatement offered. (para 9)

(2) Reinstatement is the primary remedy in industrial law and an acceptance of it or an unreasonable rejection of it by the workman must be treated as having put an end to the dispute. (para 10)

(3) The applicant refused the offer of reinstatement to his previous post with the same terms and conditions of employment. If the employer reinstates or offers to reinstate the employee to his former employment without loss of any benefits or privileges, there is simply nothing to refer because of the reinstatement or the offer thereof. If the Minister does refer then the exercise of his discretion may be quashed as being obviously unreasonable (*See Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals*; Gopal Sri Ram JCA). Therefore, in the present case, the Minister did not commit any error of law in refusing to refer the applicant's representation to the Industrial Court as there was nothing to refer. (para 11)

(4) The Minister's omission to state that he found the representation frivolous or vexatious was insufficient to render his decision invalid. On the materials before the Minister and the court, there was sufficient evidence to support the decision of the Minister. (para 12)

Case(s) referred to:
Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665 CA ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(3)
Rules of the High Court 1980, O. 53

For the applicant - B Lobo; M/s Lobo & Assoc
For the 1st respondent - Suhaila Harun SFC; AG's Chambers
For the 2nd respondent - Ramesh Gopal (Joanne Thevathasan with him); M/s Rajes Hisham Rahim & Gopal

Reported by Usha Thiagarajah

JUDGMENT

Aziah Ali J:

[1] This is an application for judicial review under O. 53 of the Rules of the High Court 1980 for an order of *certiorari* to quash the decision of the 1st respondent, the Minister made under s. 20(3) of

A the Industrial Relations Act 1967 ("the Act") refusing to refer the applicant's representation to the Industrial Court for adjudication. I dismissed the application with costs of RM2,500 to each respondent.

[2] The salient background facts show that the applicant
B commenced employment with the 2nd respondent on 15 March 2005 as the 2nd respondent's Head of Finance and Credit Control. He was confirmed in his post on 14 September 2005. On 28 February 2006 the 2nd respondent issued to the applicant a notice in which the 2nd respondent stated that on 25 January 2006 at a
C meeting between representatives of the 2nd respondent and the applicant, the applicant was informed that the 2nd respondent found the applicant unsuitable and incompetent to be the 2nd respondent's Head of Finance and Credit Control. The 2nd respondent states that at the request of the applicant, the 2nd
D respondent agreed to give the applicant a grace period of six months to enable the applicant to look for a new job instead of three months as per his letter of appointment. The 2nd respondent states that the applicant agreed to serve a written notice of resignation of six months effective 25 January 2006. However the 2nd respondent
E did not receive any resignation letter from the applicant. Therefore by letter dated 28 February 2006 the 2nd respondent gave the applicant three months' notice of termination.

[3] The applicant replied by two letters both dated 2 March 2006
F denying and disputing the contents of the 2nd respondent's letter. The applicant further disputes the contents and denies knowledge of a letter dated 2 March 2006 written by one Choo Chee Beng ("Choo"), the Chief Financial Officer of Country Heights Holdings Bhd to Tan Sri Lee Kim Yew ("Tan Sri"), the Group Managing
G Director of Country Heights Holdings Bhd. In the said letter Choo referred to a meeting between him and the applicant and stated that the applicant did not support the idea of a merger and co-operation of the Finance & Credit Control Department of Mines Resort. Choo further stated in the letter that the applicant would rather
H leave the company with compensation of six months' salary.

[4] In a letter dated 9 March 2006 addressed to the 2nd respondent's Deputy Chief Executive Officer, the applicant stated that he was requested by Tan Sri to write a letter requesting compensation of nine months' salary for Tan Sri to consider and he
I had to write the letter because he was under pressure from Tan Sri. The applicant further stated that it was not true that he was not

willing to join the merger and centralization but he was not agreeable to a change of employer from the 2nd respondent to Country Heights Holdings Berhad. By the same letter the applicant informed the 2nd respondent that he considered himself dismissed (exh. LST7).

[5] The applicant did not report for work from 9 March 2006 and the 2nd respondent issued a letter asking him to report for work but the applicant refused. In any event by a letter dated 3 April 2006 the 2nd respondent withdrew all the letters issued to the applicant earlier and requested him to report for work in the same position and with the same terms and conditions of employment (exh. LST10). The applicant did not report for work and the 2nd respondent issued further notices dated 7 April 2006 and 13 April 2006 (exh. LST12, LST13) requesting the applicant to report for work failing which he would be deemed to have abandoned his employment.

[6] Pursuant to representation made by the applicant, the 2nd respondent states that at a conciliation meeting on 21 April 2006 the applicant was offered reinstatement to his previous position with exactly the same terms and conditions and the applicant was required to report for work on 2 May 2006. Otherwise the applicant would be deemed to have abandoned his employment. The offer was also made *vide* two letters to the applicant dated 21 April 2006 and 24 April 2006 (exh. LST15 and LST16).

[7] The applicant responded by a letter dated 27 April 2006 (exh. LST17) wherein he stated that the issue of him reporting for work on 2 May 2006 did not arise because the 2nd respondent had failed to comply with his conditions for reinstatement ie, that the 2nd respondent withdraw the 2nd respondent's letters dated 28 February 2006 (exh. LST3) and 13 April 2006 (exh. LST13) and the withdrawal letter is to be signed by Tan Sri. Further the applicant states that as his matter was now with the Ministry he would await the Ministry's further action to resolve the matter.

[8] In his affidavit (encl. 17) the Minister *vide* paras. 9 and 10 referred to all the evidence obtained from both the applicant and the 2nd respondent that were presented to him. The Minister avers *vide* paras. 18 and 21(d) that he believes that the 2nd respondent has offered to reinstate the applicant in accordance with s. 20 of the Act but the applicant refused. The Minister found that there is no

serious issue or fact that requires adjudication. In para. 4.1 of his affidavit in reply the applicant states that there was no reinstatement offered as the offer of reinstatement was not to the 2nd respondent but to Country Heights Holdings.

Decision

[9] The letters sent by the 2nd respondent prior to and after conciliation proceedings clearly show that the offer of reinstatement was to the applicant's previous post. I note that in the applicant's letter to the 2nd respondent dated 27 April 2006 (exh. LST17) refusing reinstatement, no issue was raised by the applicant on the terms of the reinstatement offered.

[10] Reinstatement is the primary remedy in industrial law and an acceptance of it or an unreasonable rejection of it by the workman must be treated as having put an end to the dispute. In *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals* [1997] 1 CLJ 665 Gopal Sri Ram JCA (as he then was) said *inter alia* as follows:

> Take the case of a workman who has admitted the commission of serious misconduct such as an assault upon his employer or a fellow employee, or to theft of his employer's property; or where, for example, the employer, after dismissing the workman, repents and reinstates or offers to reinstate him in his former employment without loss of any benefits or privileges. In all these examples, the Minister may well be within the purview of the section in declining a reference. In the last example, there is simply nothing to refer because of the reinstatement or the offer thereof. If in such a case the Minister does decide to refer, then, the exercise of his discretion may be quashed in *certiorari* proceedings as being obviously unreasonable. Reinstatement is the primary remedy in industrial law and an acceptance of it or an unreasonable rejection of it by the workman must be treated as having put an end to the dispute.

[11] In the present case the applicant has refused the offer of reinstatement to his previous post with the same terms and conditions of employment. As His Lordship Gopal Sri Ram said in *Hong Leong Equipment Sdn Bhd* referred to above, if the employer reinstates or offers to reinstate the employee to his former employment without loss of any benefits or privileges, there is simply nothing to refer because of the reinstatement or the offer thereof. If the Minister does refer then the exercise of his discretion

may be quashed as being obviously unreasonable. Therefore I find that the Minister has not committed any error of law in refusing to refer the applicant's representation to the Industrial Court. There is nothing to refer.

[12] Counsel for the applicant raised the issue that the Minister has not stated in his affidavit that he found the representation frivolous or vexatious. In my opinion such omission is insufficient to render the Minister's decision invalid. In any event I find that on the materials before the Minister and the court there is sufficient evidence to support the decision of the Minister. For the reasons stated the application is dismissed with costs of RM2,500 to each respondent.